

AMENDED IN ASSEMBLY JUNE 16, 2005

AMENDED IN SENATE MAY 3, 2005

AMENDED IN SENATE APRIL 26, 2005

AMENDED IN SENATE APRIL 11, 2005

SENATE BILL

No. 619

Introduced by Senators Speier, Denham, and Torlakson

(Coauthors: Senators Alquist and Romero)

(Coauthors: Assembly Members DeVore, Garcia, Shirley Horton,
Jones, Mullin, and Pavley)

February 22, 2005

An act to add Chapter 1.4 (commencing with Section 1210.7) to Title 8 of Part 2 of, *and* to add Article 2 (commencing with Section 3010) to Title 1 of Part 3 of, ~~and to repeal Section 3004 of,~~ the Penal Code, relating to electronic monitoring of offenders, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 619, as amended, Speier. Electronic monitoring of offenders.

Existing law authorizes probation as an alternative to incarceration for various offenses.

This bill would authorize county probation departments to use global positioning system technology to supervise persons on probation, as specified.

Existing law authorizes the release of prisoners to parole. Existing law also authorizes electronic monitoring of certain parolees.

This bill would add new provisions authorizing the Department of Corrections *and Rehabilitation* to use global positioning system technology to supervise persons on parole, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 1.4 (commencing with Section 1210.7)
2 is added to Title 8 of Part 2 of the Penal Code, to read:

3
4 CHAPTER 1.4. ELECTRONIC MONITORING
5

6 1210.7. (a) Notwithstanding any other provisions of law, a
7 county probation department may utilize continuous electronic
8 monitoring to electronically monitor the whereabouts of persons
9 on probation, as provided by this chapter.

10 (b) Any use of continuous electronic monitoring pursuant to
11 this chapter shall have as its primary objective the enhancement
12 of public safety through the reduction in the number of people
13 being victimized by crimes committed by persons on probation.

14 (c) It is the intent of the Legislature in enacting this chapter to
15 specifically expand the authority of a county probation
16 department acting pursuant to this chapter to utilize a system of
17 continuous electronic monitoring that conforms with the
18 requirements of this chapter.

19 (d) For purposes of this chapter, “continuous electronic
20 monitoring” may include the use of worldwide radio navigation
21 system technology, known as the Global Positioning System, or
22 GPS. The Legislature finds that because of its capability for
23 continuous surveillance, continuous electronic monitoring has
24 been used in other parts of the country to monitor persons on
25 formal probation who are identified as requiring a high level of
26 supervision.

27 (e) The Legislature finds that continuous electronic monitoring
28 has proven to be an effective risk management tool for
29 supervising high-risk persons on probation who are likely to
30 reoffend where prevention and knowledge of their whereabouts
31 is a high priority for maintaining public safety.

1 1210.8. A county probation department may utilize a
2 continuous electronic monitoring device pursuant to this section
3 that has all of the following attributes:

4 (a) A device designed to be worn by a human being.

5 (b) A device that emits a signal as a person is moving or is
6 stationary. The signal shall be capable of being received and
7 tracked across large urban or rural areas, statewide, and being
8 received from within structures, vehicles, and other objects to the
9 degree technically feasible in light of the associated costs, design,
10 and other considerations as are determined relevant by the county
11 probation department.

12 (c) A device that functions 24 hours a day.

13 (d) A device that is resistant or impervious to unintentional or
14 willful damage.

15 1210.9. (a) A continuous electronic monitoring system may
16 have the capacity to immediately notify a county probation
17 department of violations, actual or suspected, of the terms of
18 probation that have been identified by the monitoring system if
19 the requirement is deemed necessary by the county probation
20 officer with respect to an individual person.

21 (b) The information described in subdivision (a), including
22 geographic location and tampering, may be used as evidence to
23 prove a violation of the terms of probation.

24 1210.10. A county probation department shall establish the
25 following standards as are necessary to enhance public safety:

26 (a) Standards for the minimum time interval between
27 transmissions of information about the location of the person
28 under supervision. The standards shall be established after an
29 evaluation of, at a minimum, all of the following:

30 (1) The resources of the county probation department.

31 (2) The criminal history of the person under supervision.

32 (3) The safety of the victim of the persons under supervision.

33 (b) Standards for the accuracy of the information identifying
34 the location of the person under supervision. The standards shall
35 be established after consideration of, at a minimum, all of the
36 following:

37 (1) The need to identify the location of a person proximate to
38 the location of a crime, including a violation of probation.

39 (2) Resources of the probation department.

40 (3) The need to avoid false indications of proximity to crimes.

1 1210.11. (a) A county probation department operating a
2 system of continuous electronic monitoring pursuant to this
3 section shall establish prohibitions against unauthorized access
4 to, and use of, information by private or public entities as may be
5 deemed appropriate. Unauthorized access to, and use of,
6 electronic signals includes signals transmitted in any fashion by
7 equipment utilized for continuous electronic monitoring.

8 (b) Devices used pursuant to this section shall not be used to
9 eavesdrop or record any conversation, except a conversation
10 between the participant and the person supervising the participant
11 that is to be used solely for the purposes of voice identification.

12 1210.12. (a) A county chief probation officer shall have the
13 sole discretion to decide which persons shall be supervised using
14 continuous electronic monitoring administered by the county
15 probation department. No individual shall be required to
16 participate in continuous electronic monitoring authorized by this
17 chapter for any period or time longer than the term of probation.

18 (b) The county chief probation officer shall establish written
19 guidelines that identify those persons on probation subject to
20 continuous electronic monitoring authorized by this chapter.
21 These guidelines shall include the need for enhancing monitoring
22 in comparison to other persons not subject to the enhanced
23 monitoring and the public safety needs that will be served by the
24 enhanced monitoring.

25 1210.13. A county chief probation officer may revoke, in his
26 or her discretion, the continuous monitoring of any individual.

27 1210.14. Whenever a probation officer supervising an
28 individual has reasonable cause to believe that the individual is
29 not complying with the rules or conditions set forth for the use of
30 continuous electronic monitoring as a supervision tool, the
31 probation officer supervising the individual may, without a
32 warrant of arrest, take the individual into custody for a violation
33 of probation.

34 1210.15. (a) A chief probation officer may charge persons
35 on probation for the costs of any form of supervision that utilizes
36 continuous electronic monitoring devices that monitor the
37 whereabouts of the person pursuant to this chapter, upon a
38 finding of the ability to pay those costs. This authority is not
39 limited solely to the cost of continuous electronic monitoring
40 devices, but may also include reasonable and necessary expenses

relating to the procurement, maintenance, and monitoring of the devices. Inability to pay all or a portion of the costs of continuous electronic monitoring authorized by this chapter shall not preclude use of continuous electronic monitoring and eligibility for probation shall not be enhanced by reason of ability to pay.

(b) A chief probation officer may charge a person on probation pursuant to subdivision (a) for the cost of continuous electronic monitoring in accordance with Section 1203.1 provided the person has first satisfied all other outstanding base fines, state and local penalties, restitution fines, and restitution orders imposed by a court.

1210.16. It is the intent of the Legislature that continuous electronic monitoring established pursuant to this chapter maintain the highest public confidence, credibility, and public safety. In the furtherance of these standards, the following shall apply:

(a) The chief probation officer may administer continuous electronic monitoring pursuant to written contracts and appropriate public or private agencies or entities to provide specified supervision services. No public or private agency or entity may operate a continuous electronic monitoring system as authorized by this section in any county without a written contract with the county's probation department. No public or private agency or entity entering into a contract may itself employ any person who is a participant in continuous electronic monitoring surveillance.

(b) The county board of supervisors, the chief probation officer, and designees of the chief probation officer shall comply with Section 1090 of the Government Code in the consideration, making, and execution of contracts pursuant to this section.

SEC. 2. Article 2 (commencing with Section 3010) is added to Chapter 8 of Title 1 of Part 3 of the Penal Code, to read:

Article 2. Electronic Monitoring

3010. (a) Notwithstanding any other provisions of law, the Department of Corrections *and Rehabilitation* may utilize continuous electronic monitoring to electronically monitor the whereabouts of persons on parole, as provided by this article.

(b) Any use of continuous electronic monitoring pursuant to this article shall have as its primary objective the enhancement of public safety through the reduction in the number of people being victimized by crimes committed by persons on parole.

(c) It is the intent of the Legislature in enacting this article to specifically expand the authority of the department acting pursuant to this article to utilize a system of continuous electronic monitoring that conforms with the requirements of this article.

(d) (1) For purposes of this article, “continuous electronic monitoring” may include the use of worldwide radio navigation system technology, known as the Global Positioning System, or GPS. The Legislature finds that because of its capability for continuous surveillance, continuous electronic monitoring has been used in other parts of the country to monitor persons on parole who are identified as requiring a high level of supervision.

(2) For purposes of this article, “department” means the Department of Corrections.

(e) The Legislature finds that continuous electronic monitoring has proven to be an effective risk management tool for supervising high-risk persons on parole who are likely to reoffend where prevention and knowledge of their whereabouts is a high priority for maintaining public safety.

3010.1. The department may utilize a continuous electronic monitoring device, as distinguished from an electronic monitoring device as described in Section 3004, pursuant to this section that has all of the following attributes:

(a) A device designed to be worn by a human being.

(b) A device that emits a signal as a person is moving or is stationary. The signal shall be capable of being received and tracked across large urban or rural areas, statewide, and being received from within structures, vehicles, and other objects to the degree technically feasible in light of the associated costs, design, and other considerations as are determined relevant by the department.

(c) A device that functions 24 hours a day.

(d) A device that is resistant or impervious to unintentional or willful damage.

3010.2. (a) A continuous electronic monitoring system may have the capacity to immediately notify the department of

1 violations, actual or suspected, of the terms of parole that have
2 been identified by the monitoring system if the requirement is
3 deemed necessary by the parole officer with respect to an
4 individual person.

5 (b) This information, including geographic location and
6 tampering, may be used as evidence to prove a violation of the
7 terms of parole.

8 3010.3. The department shall establish the following
9 standards as are necessary to enhance public safety:

10 (a) Standards for the minimum time interval between
11 transmissions of information about the location of the person
12 under supervision. The standards shall be established after an
13 evaluation of, at a minimum, all of the following:

- 14 (1) The resources of the department.
15 (2) The criminal history of the person under supervision.
16 (3) The safety of the victim of the persons under supervision.

17 (b) Standards for the accuracy of the information identifying
18 the location of the person under supervision. The standards shall
19 be established after consideration of, at a minimum, all of the
20 following:

21 (1) The need to identify the location of a person proximate to
22 the location of a crime, including a violation of parole.

23 (2) Resources of the department.

24 (3) The need to avoid false indications of proximity to crimes.

25 3010.4. (a) The department, operating a system of
26 continuous electronic monitoring pursuant to this section, shall
27 establish prohibitions against unauthorized access to, and use of,
28 information by private or public entities as may be deemed
29 appropriate. Unauthorized access to, and use of, electronic
30 signals includes signals transmitted in any fashion by equipment
31 utilized for continuous electronic monitoring.

32 (b) Devices used pursuant to this ~~section~~ *article* shall not be
33 used to eavesdrop or record any conversation, except a
34 conversation between the participant and the person supervising
35 the participant that is to be used solely for the purposes of voice
36 identification.

37 3010.5. (a) The ~~Parole Authority~~ *department* shall have the
38 sole discretion to decide which persons shall be supervised using
39 continuous electronic monitoring administered by the
40 department. No individual shall be required to participate in

1 continuous electronic monitoring authorized by this article for
2 any period or time longer than the term of parole.

3 (b) The department shall establish written guidelines that
4 identify those persons on parole subject to continuous electronic
5 monitoring authorized by this article. These guidelines shall
6 include the need for enhancing monitoring in comparison to other
7 persons not subject to the enhanced monitoring and the public
8 safety needs that will be served by the enhanced monitoring.

9 3010.6. A parole officer may revoke, in his or her discretion,
10 the continuous monitoring of any individual.

11 3010.7. Whenever a parole officer supervising an individual
12 has reasonable cause to believe that the individual is not
13 complying with the rules or conditions set forth for the use of
14 continuous electronic monitoring as a supervision tool, the
15 officer supervising the individual may, without a warrant of
16 arrest, take the individual into custody for a violation of parole.

17 3010.8. (a) The department may charge persons on parole
18 for the costs of any form of supervision that utilizes continuous
19 electronic monitoring devices that monitor the whereabouts of
20 the person pursuant to this article. This authority is not limited
21 solely to the cost of continuous electronic monitoring devices,
22 but may also include reasonable and necessary expenses relating
23 to the procurement, maintenance, and monitoring of the devices.
24 Inability to pay all or a portion of the costs of continuous
25 electronic monitoring authorized by this article shall not preclude
26 use of continuous electronic monitoring and eligibility for parole
27 shall not be enhanced by reason of ability to pay.

28 (b) Any person released on parole pursuant to subdivision (a)
29 may be required to pay for that monitoring upon a finding of the
30 ability to pay those costs. However, the department shall waive
31 any or all of that payment upon a finding of an inability to pay.
32 The department shall consider any remaining amounts the person
33 has been ordered to pay in fines, assessments and restitution
34 fines, fees, and orders, and shall give priority to the payment of
35 those items before requiring that the person pay for the
36 continuous electronic monitoring.

37 3010.9. It is the intent of the Legislature that continuous
38 electronic monitoring established pursuant to this article maintain
39 the highest public confidence, credibility, and public safety. In
40 the furtherance of these standards, the following shall apply:

1 (a) The department may administer continuous electronic
2 monitoring pursuant to written contracts and appropriate public
3 or private agencies or entities to provide specified supervision
4 services. No public or private agency or entity may operate a
5 continuous electronic monitoring system as authorized by this
6 section without a written contract with the department. No public
7 or private agency or entity entering into a contract may itself
8 employ any person who is a participant in continuous electronic
9 monitoring surveillance.

10 (b) The department shall comply with Section 1090 of the
11 Government Code in the consideration, making, and execution of
12 contracts pursuant to this section.

13 SEC. 3. This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety
15 within the meaning of Article IV of the Constitution and shall go
16 into immediate effect. The facts constituting the necessity are:

17 In order to assure appropriate supervision of persons on
18 probation and parole and to reduce incidents of crime and
19 recidivism, it is necessary for this act to take effect immediately.